

Message Text

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FM SECSTATE WASHDC
TO AMEMBASSY OTTAWA PRIORITY

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E.O. 11652: N/A

TAGS: ENRG, CA

SUBJECT: LETTER TO AMBASSADOR ENDERS FROM FERC COMMISSIONER
DON SMITH

, FOLLOWING IS THE TEXT OF SMITH/ENDERS LETTER REFERRED
TO SEPTEL

2. BEGIN TEXT: DEAR AMBASSADOR ENDERS: WE HAVE MADE AN
INITIAL REVIEW OF THE TEXTS OF THE FOOTHILLS JULY 11, 1978
LETTER TO MR. MACEACHEN INFORMING HIM OF THEIR PIPE PRO-
CUREMENT PLANS, MR. MACEACHEN'S REPLY, AND NORTHERN PIPE-
LINE COMMISSIONER MITCHELL SHARP'S JULY 14 LETTER TO YOU
ENCLOSING THE OTHER TWO. WE HAVE A NUMBER OF CONCERNS
REGARDING THE PROPOSED PROCUREMENT PLAN, WHICH WE REQUEST
THAT YOU CONVEY TO APPROPRIATE CANADIAN AUTHORITIES. AMONG
THOSE CONCERNS ARE:

1. THE DECISION TO INVITE BIDS FOR MAINLINE PIPE RE-
QUIREMENTS SEEMS UNREASONABLY EXCLUSIONARY, EVEN IF "APPRO-
VED" NORTH AMERICAN SUPPLIERS ARE INCLUDED. WHY SHOULD NOT
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BID DOCUMENTS BE MADE AVAILABLE TO ALL COMPANIES WHO EXPRESS
AN INTEREST? -

2. WHAT IS INVOLVED IN BECOMING AN "APPROVED NORTH
AMERICAN SUPPLIER?"

3. IF STELCO AND IPSCO ARE DEEMED TO BE THE ONLY APPROVED SUPPLIERS OF 56-INCH PIPE, HOW ARE WE TO BE ASSURED THAT THE PRICE OF THE PIPE IS "GENERALLY COMPETITIVE?"

4. FOR THE U.S. MILLS CONSIDERED TO BE CANDIDATES FOR APPROVAL AS PRODUCERS OF OTHER SIZES, WHAT IS INVOLVED IN THE "TECHNICAL AND COMMERCIAL EVALUATIONS" INTENDED TO BE CONDUCTED? SUCH EVALUATIONS WOULD SEEM TO GIVE THE CANADIAN PIPELINE COMPANIES THE OPPORTUNITY TO ARBITRARILY EXCLUDE U.S. OR OTHER SUPPLIERS WHICH WERE CAPABLE OF SUPPLYING PIPE AT THE BEST POSSIBLE PRICES.

5. THE POSSIBILITY THAT OFFSHORE SUPPLIERS MIGHT BE PROVIDED INFORMATION ON REQUIREMENTS IF THEY EXPRESS AN INTEREST OFFERS INADEQUATE PROTECTION OF THE U.S. CONSUMER'S INTEREST. AGAIN, WHY SHOULD NOT BID DOCUMENTS BE MADE AVAILABLE TO ANY SUPPLIERS WHO EXPRESS AN INTEREST IN BIDDING?

6. WITH REGARD TO FOOTHILLS' "CONSIDERATIONS BEYOND PRICE AND DELIVERY" TO BE TAKEN INTO ACCOUNT WHAT IS MEANT BY "ITS SPONSOR COMPANIES AND FOOTHILLS HAVE A NEED TO ASSURE CONTINUITY OF FUTURE SUPPLY FROM THE CANADIAN PIPE VENDERS, OVER AND ABOVE THIS PROJECT?"

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7. WHAT IS MEANT BY "CONSIDERING NATIONAL PROCURING AND SUBSIDIZING POLICIES" IN FOOTHILLS' CONSIDERATION OF FOREIGN, INCLUDING U.S., BIDS?

SOME OTHER ISSUES ARE RAISED IN THE LETTERS. IN PARTICULAR, MR. MACEACHEN'S JULY 13 LETTER TO MR. BLAIR MENTIONS SUBMISSION TO THE ADMINISTRATOR OF THE NORTHERN PIPELINE AGENCY FOR HIS PRIOR APPROVAL BID DOCUMENTS AND A BIDDERS LIST FOR THE MAINLINE PIPE. IT WOULD NOT SEEM UNREASONABLE THAT U.S. AUTHORITIES COULD REVIEW THE BID DOCUMENTS AND BIDDERS LIST PRIOR TO FOOTHILLS SENDING THEM OUT, TO SEE WHETHER OR NOT BID DOCUMENTS CONTAINED SPECIFICATIONS WHICH WOULD UNREASONABLY NARROW OPPORTUNITIES FOR NON-CANADIAN FIRMS PARTICIPATING IN THE BIDDING. SOME SUCH PRIOR REVIEW WOULD SEEM TO BE WITHIN THE SPIRIT OF IMPLEMENTING SECTION 7 OF THE AGREEMENT ON PRINCIPLES BETWEEN THE UNITED STATES AND CANADA. THE CANADIAN GOVERNMENT IS CLEARLY RESPONSIBLE FOR IMPLEMENTATION OF THAT SECTION OF THE AGREEMENT, AND APPROVAL OF SPECIFICATIONS FOR BIDS AND LISTS OF

POTENTIAL BIDDERS WHOUD SEEM TO BE A PROCEDURAL STEP AT WHICH TIME IT WOULD BE APPROPRIATE TO APPLY THE TEST OF

"GENERALLY COMPETITIVE TERMS." EVEN IF THE U.S. GOVERNMENT AUTHORITIES WERE NOT PERMITTED TO SEE SPECIFICATIONS OR BIDDERS LISTS PRIOR TO APPROVAL IT WOULD SEEM APPROPRIATE FOR U.S. AND CANADIAN AUTHORITIES TO WORK OUT THE CRITERIA WHICH THE CANADIAN GOVERNMENT WOULD USE IN THEIR REVIEW OF SPECIFICATIONS AND BIDDERS LISTS TO DETERMINE COMPLIANCE WITH THE AGREEMENT ON PRINCIPLES.

WITH REGARD TO COMMISSIONER SHARP'S QUESTIONS TO YOU ABOUT A RECIPROCAL INFORMATION FLOW ON PURCHASING PLANS, WE DISCUSSED THIS MATTER WITH HIM WHEN HE WAS HERE IN JUNE. UNDER THE REORGANIZATION PLAN WHICH WE HOPE TO HAVE BEFORE THE CONGRESS SHORTLY, THE FEDERAL INSPECTOR WILL BE PRIMARILY RESPONSIBLE FOR INSURING COMPLIANCE WITH THE LIMITED OFFICIAL USE

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AGREEMENT ON PRINCIPLES BETWEEN THE U.S. AND CANADA. IN THIS REGARD, HE WILL UNDOUBTEDLY NEED TO ESTABLISH PROCEDURES FOR DETERMINING THAT THE "GENERALLY COMPETITIVE TERMS" TEST IN SECTION 7 HAS BEEN SATISFIED. BECAUSE OF THIS REQUIREMENT, AND BECAUSE OF THE COMMISSION'S RESPONSIBILITIES TO ASSURE ADEQUATE PROTECTION OF THE PUBLIC INTEREST IN SETTING PIPELINE RATES, WE ARE CONFIDENT THAT FULLY SATISFACTORY ARRANGEMENTS FOR FORWARDING PROCUREMENT INFORMATION TO CANADA, FOR DISSEMINATION AS THE CANADIAN GOVERNMENT SEES FIT, CAN BE MADE. THE DIFFICULTY, OF COURSE, HAS BEEN THE ABSENCE OF THE FEDERAL INSPECTOR. JOHN ADGER IS WORKING WITH THE APPROPRIATE PEOPLE AT STATE TO INSURE THAT THINGS MOVE QUICKLY WHEN THE FEDERAL INSPECTOR COMES ABOARD.

AS AN INTERIM MEASURE, SOME SETS OF SPECIFICATIONS FOR CERTAIN PIPELINE COMPONENTS ARE BEING SUBMITTED TO THE APPROPRIATE U.S. GOVERNMENT REGULATORY AUTHORITIES FOR APPROVAL OF SAFETY ASPECTS. WE WOULD BE GLAD TO MAKE THE COMPANIES' SUBMISSIONS, ALONG WITH ANY U.S. GOVERNMENT AGENCY COMMENTS ON THOSE SUBMISSIONS, AVAILABLE TO ANYONE IN CANADA WHO WANTED TO SEE THEM. HENCEFORTH, WE WILL PLAN TO FORWARD TO YOU FOR TRANSMISSION TO THE NORTHERN PIPELINE AGENCY ANY PROPOSED SPECIFICATIONS FOR PIPELINE COMPONENTS WHICH HAVE BEEN SUBMITTED FOR GOVERNMENT APPROVAL, IN ORDER THAT NORTHERN PIPELINE AGENCY PERSONNEL CAN ASSESS FOR THEMSELVES WHETHER OR NOT ANY MATERIALS OR EQUIPMENT SPECIFICATIONS ARE UNNECESSARILY EXCLUSIONARY. WE WILL BEGIN FORWARDING SUCH DOCUMENTS TO YOU AS SOON AS THEY BECOME AVAILABLE.

THANK YOU FOR YOUR ASSISTANCE IN TRANSMITTING THESE CONCERNS TO THE NORTHERN PIPELINE AGENCY. WE LOOK FORWARD

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;O RECEIVING YOUR REPLY. SINCERELY, DON S. SMITH. END
TEXT.

3. EMBASSY SHOULD DRAW FREELY ON ABOVE TEXT FOR DISCUSSION
WITH GOC OFFICIALS, WITH EXCEPTION FINAL SENTENCE THIRD
PARAGRAPH OF TEXT ("EVEN IF THE U.S...."), WHICH IS FOR
YOUR INFORMATION ONLY AT PRESENT. ORIGINAL LETTER BEING
POUCHED TO EMBASSY. VANCE

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Message Attributes

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Review Content Flags:
Review Date: 05 may 2005
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Review Exemptions: n/a
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To: OTTAWA
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